



AIRPORT LAND USE COMMISSION

FOR ORANGE COUNTY

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MINUTES OF REGULAR MEETING

January 19, 2023

- PLACE:** John Wayne Airport Administration Building
Airport Commission Hearing Room
3160 Airway Avenue
Costa Mesa, California 92626
- TIME:** Regular Meeting called to order at 4:00 p.m. by Chairman
Bresnahan
- COMMISSIONERS PRESENT:** Gerald Bresnahan, Stephen Beverburg, Austin Lumbard,
Mark Monin, Alan Murphy, Schelly Sustarsic
Alternate Commissioners Present: Patricia Campbell, Gary
Miller
- COMMISSIONERS ABSENT:** None
- STAFF PRESENT:** Lea U. Choum, Executive Officer
Jeff Stock, County Counsel
Julie Fitch, Staff Planner
Catherine Bennett, Recording Secretary
- PLEDGE:** Chairman Bresnahan led all present in the Pledge of
Allegiance

INTRODUCTIONS:

Executive Officer, Lea Choum introduced ALUC's new Recording Secretary, Catherine Bennett, and John Wayne Airport's Technical Associate, Innessa Zvulun.

APPROVAL OF MINUTES:

Chairman Bresnahan called for a motion to approve the minutes from the February 17, 2022, meeting. On Commissioner Beverburg's motion and Commissioner Monin's second, the Commission voted 5-0 to approve the meeting minutes. Commissioner Murphy abstained.

Chairman Bresnahan called for a motion to approve the minutes from the March 17, 2022, meeting. On Commissioner Monin's motion and Commissioner Murphy's second, the Commission voted 5-0 to approve the meeting minutes. Commissioner Lumbard abstained.

Chairman Bresnahan called for a motion to approve the minutes from the September 15, 2022, meeting. On Commissioner Sustarsic's motion and Commissioner Beverburg's second, the Commission voted 5-0 to approve the meeting minutes. Commissioner Murphy abstained.

NEW BUSINESS:

1. City of Los Alamitos Request for Consideration of Draft Housing Element Update (2021-2029)

Julie Fitch, Staff Planner, stated that the City of Los Alamitos (City) submitted its 2021-2029 Housing Element Update for consistency review. The City's last Housing Element Update was in 2014 and was not submitted to ALUC for a consistency determination.

Ms. Fitch presented the staff report and concluded by saying that ALUC staff recommends that the Commission find the proposed Los Alamitos Housing Element Update (2021-2029) inconsistent with the *AELUP for Joint Forces Training Base, Los Alamitos* in accordance with 1) Section 2.1.1 Aircraft Noise; 2) Public Utilities Code (PUC) Section 21674, referenced in Section 1.2 of the AELUP; and 3) the general land use policies AELUP Section 3.2.1.

Ms. Fitch stated that there were representatives from the City who were present and available to answer questions.

Commissioner Lumbard asked if the projected density in Table B2 in the staff report is what City intends to accommodate, because it does not match the maximum units per acre for Sites 6 and 10.

Ron Noda, Deputy City Manager and Development Services Director for the City of Los Alamitos clarified that the Los Alamitos City Council meeting is scheduled for January 23, 2023. He introduced Tom Oliver, Associate Planner for the City of Los Alamitos, as well as Mr. Irwin Montenegro who is the Development Services Manager. Mr. Noda stated that the City chose to place housing sites throughout the City to spread out the density while still meeting their Regional Housing Needs Allocation (RHNA) numbers. Mr. Oliver stated that the lower numbers are required to meet the RHNA, and the maximum numbers are what the Zoning Code would allow.

Commissioner Lumbard asked if the maximum number included density bonuses. Mr. Oliver replied that it does. Commissioner Lumbard also asked if it would take 4 out of 5 City Council members to override an inconsistent finding of the ALUC. Mr. Noda replied yes.

Commissioner Sustarsic asked if Site 6 (4665 Lampson Avenue) was zoned R-2, R-3, or R-4. Mr. Noda stated that Site 6 is going to be zoned for R-3.

Chairman Bresnahan asked ALUC staff the difference between the two noise contour maps dated 2022 and 2015. Executive Officer, Lea Choum, Executive Officer, stated that the 2015 map (AICUZ contours) is attached to the AELUP for *JFTB-Los Alamitos* that was approved in 2017. The 2022 map (ICUZ contours) is what the City included in their Housing Element submittal and was approved by JFTB in March.

Commissioner Mark Monin asked if flight track information is available for JFTB. Ms. Choum stated the JFTB does not provide flight track information.

Commissioner Sustarsic asked for clarification on the 2015 AICUZ contour map and inquired whether the noise study in 2015 was done off of the base property. Ms. Choum stated that the 2015 AICUZ study was done entirely on-base.

Chairman Bresnahan asked for a motion from the Commission. Commissioner Beverburg motioned to approve staff recommendation and find the City of Los Alamitos Housing Element Update (2021-2029) inconsistent with the *AELUP for JFTB*. Commissioner Murphy seconded the motion. Commissioner Lumbard made a motion against staff recommendation due to the difficulty for cities to meet their RHNA numbers. After a brief discussion among the commissioners, Mr. Noda, stated that according to California Building Code, housing units can be built within 60 CNEL noise contours. Mr. Oliver added that sound attenuation would be part of the Site 6 and 10 buildings. Mr. Noda also noted that that ALUC was basing their motion on the 2015 AICUZ noise map and not the 2022 ICUZ noise map approved by the Base. After further discussion and comments from the Chairman, the motion to approve staff recommendation was approved 5-1 with Commissioner Lumbard voting in opposition.

2. **Proposed Consistent and Inconsistent Agency Definitions:**

Ms. Choum stated that during the September 2022 ALUC meeting, the Commission directed staff to recommend definitions of “consistent” and “inconsistent” agencies and how staff would incorporate these terms in future ALUC agendas.

ALUC Counsel Jeff Stock presented four criteria that define an agency as inconsistent: if a local agency fails to submit an item that should have submitted; if ALUC finds a submittal inconsistent and the local agency fails to overrule the Commission; if a local agency fails to update its General Plan to be consistent with the AELUP; or if the Commission updates an AELUP, notifies local agencies to update their General Plan, but they do not.

Mr. Stock explained that historically, the Commission has used the term “inconsistent agency” as a broad term to describe any of those four criteria, and that the PUC does not use the term. He noted that if a local agency takes steps to overrule the Commission, then the agency should no longer be considered “inconsistent.” Mr. Stock also noted that anytime an item is determined to be inconsistent, and a city fails to overrule the Commission, then the

Commission can impose additional requirements on the city, for example, requesting that the city submit all future land use decisions to ALUC.

As an alternative to the terms “consistent agencies” and “inconsistent agencies,” Mr. Stock stated that the Commission could use “inconsistent item determinations,” and asked the Commission to provide direction to staff for what terms to use on future agendas.

Ms. Choum stated that the agenda includes a draft letter to the City of Seal Beach in response to the letter that the City provided to the Commission at the March 17, 2022 meeting. She asked for direction from the Commission.

Commissioner Monin asked if Laguna Woods would need to be listed on every agenda if the Commission adopts the new terms. Ms. Choum noted that Laguna Woods is listed as an inconsistent agency because they have not updated their General Plan after the *AELUP* for *Heliports* was updated. Mr. Stock answered that under the new proposal, instead of Laguna Woods being listed as an “inconsistent agency,” it would be referred to as “inconsistent determination due to failure to update their General Plan.” He also noted that after a specific amount of time, the issue becomes irrelevant because there is no legal action the Commission can take against the cities for failing to update their General Plans. He stated that after six months, the statute of limitations ends and listing an agency as inconsistent becomes mute.

Chairman Bresnahan stated that there is no harm in leaving “inconsistent agencies” on the agenda beyond the statute of limitations as it provides a way to recognize trends in submittals to ALUC from specific cities. Chairman Bresnahan also stated that he sees more and more cities not submitting items to ALUC for review.

Commissioner Beverburg noted that “inconsistent” has been used in two different ways: one, as a reminder that there are some cities that have not updated their General Plans to be consistent with an AELUP; and two, to refer to a submittal that is not consistent with the AELUP.

Alternate Miller discussed the past inconsistency finding of the Seal Beach Housing Element Update, and that the term “inconsistent” in this example indicates that there is an important item missing. He supports the use of the term “inconsistent” to indicate that a city is not up to date on specific documents. Mr. Stock noted that if a city is required to submit a General Plan to ALUC, but fails to do so, then the adoption of the plan is void. Therefore, if the plan were procedurally challenged, a court could require that the city go back and follow procedure before it can adopt its General Plan.

Commissioner Sustarsic asked for clarification on what happens when ALUC finds a city inconsistent on a specific action if the city council passes an overrule on ALUC’s determination. She asked if the overrule “fixes” a city’s inconsistency. Mr. Stock said that if a city overrules the Commission, it is overruling the submittal only, and that makes the submittal consistent. The overrule does not apply to other items that the city may be inconsistent on. Ms. Sustarsic asked if a city’s overrule allows them to do whatever they want regardless of the inconsistent finding. Mr. Stock replied that if the city is doing something that is in conformity

with what they overruled, then that action does not need to come before the Commission. Ms. Sustarsic asked if the city overruled an inconsistent ruling from the Commission on a General Plan, Housing Element, or Zoning Code, would future items be required to come before the Commission. Mr. Stock replied that if an item brought to the Commission is later amended, then the new item should be brought to ALUC again for a new determination.

Commissioner Lumbard pointed out that for Los Alamitos, the Housing Element requires them to do Specific Plan updates and that does not require them to come before the Commission if it's consistent with the Housing Element. Mr. Stock confirmed that if the city is not modifying a Specific Plan, its activities consistent with what the city has overruled do not have to come back before ALUC.

Mr. Lumbard asked staff the purpose of the use of the term "consistent agencies," and if it indicates that there was correspondence between ALUC staff and the consistent agency. Ms. Choum confirmed that it would be a city that submitted an item and that the Commission found it consistent.

Commissioner Beverburg recommended the use of the word "incomplete" instead of inconsistent for cities not in compliance and "complete" for cities that are in compliance.

Chairman Bresnahan stated that in his view any agency that is listed as consistent is essentially an agency that is not inconsistent. Mr. Lumbard stated that this was the reason for his question and that it may not be relevant to have consistent agencies listed on the agenda. Chairman Bresnahan stated that agencies listed as consistent on the agenda are agencies that had their last item submitted to ALUC, and were determined to be consistent. Commissioners further discussed the advantages and disadvantages to listing cities as consistent versus inconsistent on the agenda.

Mr. Stock reminded the Commission that they decided to review the use of the terms consistent and inconsistent because the City of Seal Beach aired grievances to ALUC about using the terms.

Chairman Bresnahan asked Ms. Choum if staff has investigated how other ALUC's use the terms consistent and inconsistent. Ms. Choum replied that staff had not researched this, but that according to the PUC, it is not an official term.

Chairman Bresnahan asked if the term "incomplete" is considered an official term. Mr. Stock replied that it is not defined by statute. He stated that if ALUC adopts proposed definitions, the terms would have no legal import, but would define how ALUC wants them to be used and defined.

Chairman Bresnahan asked the Commissioners if they would like to do anything about the use of the terms. Commissioner Monin stated that he appreciates the work staff has put into this agenda item but wonders whether this may complicate things. Chairman Bresnahan agreed with Commissioner Monin's statement. He suggested that if the definitions of the terms are adopted, he will recommend that staff reach out to cities that are inconsistent, or to every city

within ALUC jurisdiction, asking if any changes have been made, and if so, why ALUC is not in receipt of those changes. He indicated that he is in favor of adopting the definition of the term “inconsistent agency” (A through D) and making modifications to the agenda to drop the use of the term “consistent agency.”

Commissioner Miller asked if there is any benefit to telling all the cities what is required to be submitted to ALUC. Commissioner Sustarsic reminded the Commission that last year letters were sent to all the cities regarding Housing Element Updates and that she believes that may have produced more compliance.

Commissioner Lumbard indicated that if Chairman Bresnahan suggestions were a motion then he seconds it. Chairman Bresnahan indicated that it was. Commissioner Lumbard asked if staff recommendation 3, Agenda Item 2, was also a part of the Chairman’s motion. Chairman Bresnahan says that it was not, and he is not in favor of sending the proposed letter drafted by staff to the City of Seal Beach. Commissioner Lumbard seconded the motion.

Ms. Choum asked Mr. Stock if staff recommendations need to have a formal motion or if staff can accept direction on how to proceed. Mr. Stock replied that a directive on each of the recommendations would suffice.

Chairman Bresnahan directed staff to incorporate the definition of inconsistent agency (as shown in A through D) in the next amendments to each AELUP. He also directed staff to update future ALUC agendas by removing “Proceedings with Inconsistent and Consistent Agencies” and add an agenda item titled “Determinations of Inconsistency.” Finally, Chairman Bresnahan recommended to not send the draft letter to City of Seal Beach because so much time has passed.

3. ALUC Listing of General Plan, Zoning Code, and Specific Plan Amendment Submittals:

Ms. Choum presented a list of items and actions for ALUC submittals since 2000. Cities not found to have submitted projects are Huntington Beach, Garden Grove, La Palma, and Stanton, all within *JFTB-Los Alamitos* AELUP. The staff recommendation is for the Commission to receive and file the report.

Chairman Bresnahan asked Mr. Stock to provide input for a scenario where the Commission found the City of Newport Beach Housing Element inconsistent, then the City overruled the Commission. He asked for clarification on what the overrule means, and if it is now okay for all projects in the City. Mr. Stock replied that for projects conforming to the overruled General Plan, that those projects would not be inconsistent due to the overrule. Mr. Stock further explained that a General Plan Amendment is one of the actions that triggers a submittal to ALUC. If there is no additional General Plan Amendment and Newport Beach was approving something that was in conformity with their laws, then an overrule paves the way for them. Mr. Stock added that an overrule also forecloses the Commission’s ability to impose other standards and requirements on a city to submit all land use decisions, based on that General Plan Amendment.

Commissioner Beverburg asked if when a city overrides, is the city under increased liability. Mr. Stock replied yes, and that the public airport operator is not liable. Commissioner Miller asked if this holds true for JFTB and inquired as to whether the government is off the hook because a city overruled the Commission. Mr. Stock replied that the Federal Government is a public agency, and they should also not be liable if an accident occurred.

Commissioner Miller asked for further clarification on overrides and wants to know if the City of Seal Beach would need to come back if they changed the zoning. Mr. Stock explained that if the City of Seal Beach changes something within the Airport vicinity that requires another change, then they would need to come back. If they are already in conformity, and not issuing zoning code amendments, then as long as the project is what their submittal was, then they do not need to come back. Commissioner Miller mentioned a hotel that is proposed in the City of Seal Beach which was determined to be inconsistent by the Commission. Mr. Stock asked if the project would require a zone change and both Commissioner Sustarsic and Miller say that it will require both a zone change and a plan change. Mr. Stock replied, then yes.

Chairman Bresnahan referred back to Newport Airport Village. On July 16, the Commission found the project inconsistent. Newport Beach overruled the Commission and built the project and it became consistent. However, the ALUC planning area or what the Commission uses to measure whether projects are consistent or inconsistent does not change, so when Newport Beach comes back with a new project next door to the old project then the Commission will likely find the new project inconsistent. Mr. Stock says that the new projects would need to be brought in front of the Commission because the original overrule was for a specific project. Chairman Bresnahan does not want the Commission to lose out on the opportunity to tell cities when they do not agree with a project. Commissioner Lumbard again stated that cities need three votes on a five member Council to approve a project, but they need four votes on a five-member council to overrule the Commission. Mr. Stock stated the law says a 2/3 vote of a City Council is needed to override the Commission, with the math rounding up.

Commissioner Campbell asked if a city proposes a project, the Commission finds it inconsistent, the City overrides the Commission, but the City turns around and intensifies the project, would the city need to come back for additional review. Mr. Stock said the answer is fact specific and that if the project requires a zoning change, then the city would have to come back to the Commission. Commissioner Campbell mentioned that the City of Seal Beach is going from a 36-foot, three-story building to a 48-foot, four-story building. Mr. Stock offered that if the General Plan of the original project sets a threshold for building height and the amplification of a project is still within Seal Beach laws, then the City would not need to come back. He reiterated that Seal Beach would not need to come back to the Commission for review unless the City needed to amend the Zoning Code or their General Plan (or a Specific Plan).

Commissioner Miller referred back to Chairman Bresnahan's example and asked for clarification in a case where a city overrules a project found inconsistent by the Commission and then the city has another project, they do not need to bring the new project before the Commission if it has not made changes to its Zoning Code or General Plan. Commissioner

Monin said there probably would be a zoning change and then the city would have to come back to the Commission for project review.

Chairman Bresnahan asked Mr. Stock what the Commission's time frame is for putting cities on notice regarding their inconsistent status under Definition A in the staff report. Mr. Stock replied that if a city was supposed to bring an item before the Commission but did not, then a city's inaction is legally challengeable. Mr. Stock explained the mechanism to challenge an inconsistent agency is to file a Writ of Mandate and the Commission would ask the Court to reverse improper findings of a city's actions. The statute of limitations to file a Writ of Mandate is six months (or 180 days) from the time of action, for certain land use decisions. Mr. Stock provided the example that if a City adopts a General Plan that did not come before the Commission for review, the clock starts ticking. If the Commission does not challenge the adoption within six months, the Commission should not bring a Writ of Mandate because a significant amount of time has elapsed the six-month statute expired.

Commissioner Miller asked who files with FAA, a city or the Commission. Ms. Choum replied that cities or developers file the Form 7460 with the FAA before coming in front of the Commission.

Commissioner Sustarsic made a correction of the City of Seal Beach overrule date from June 29 to August 29. Commissioner Miller asked if the City of Seal Beach's overrule is a legal action. Mr. Stock replied that yes, and that the City is required to notify the Commission of a overrule and allow the Commission an opportunity to provide advisory comments. Seal Beach would then need to address the Commission's advisory comments within their overrule decision and public agenda. Caltrans responds as well, and sends a similar letter to the Commission that usually expresses Caltrans' concerns, if any, with the project going forward.

4. **Administrative Status Report**

Ms. Choum summarized the Status Report content and asked the Commission if there are any questions. No questions were asked.

5. **Proceedings with Consistent Agencies:**

Nothing new to report. Going forward agenda item will not be reflected on the agenda or minutes.

6. **Proceedings with Inconsistent Agencies:**

Nothing new to report. Going forward this agenda item will be reclassified on the agenda and the minutes as "Determinations of Inconsistency."

7. **Items of Interest to the Commissioners:**

Commissioner Miller inquired about whether the City of Seal Beach would need to bring their change of building plans before the Commission. Commissioner Miller referenced the

Seal Beach project that will change in height from 36 feet to 48 feet. Mr. Stock reiterated that this will not come before the Commission if the City adheres to its Zoning Code. Commissioner Sustarsic said that the staff report indicated that the Zoning Code height in residential districts vary from 25 to 35 feet AGL. Height limit in the city's mixed use is 35-foot AGL. Commissioners Sustarsic and Miller both said that the city will have to change their Zoning Code. Commissioner Miller asked Mr. Stock if the City of Seal Beach will have to bring the project back before the Commission, and Mr. Stock replied yes.

8. **Items of Interest to the Public:**

Nothing new to report.

The next meeting is scheduled for February 16, 2023.

ADJOURNMENT:

There being no further business before the Commission, the meeting was adjourned at 5:32 p.m.

Respectfully submitted,

A handwritten signature in blue ink that reads "Lea U. Choum". The signature is fluid and cursive, with a long horizontal stroke at the end.

Lea U. Choum
Executive Officer